



Signed and Filed: December 7, 2023

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*Hannah L. Blumenstiel*

HANNAH L. BLUMENSTIEL  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re: ) Case No. 23-30662 HLB  
 )  
INTERNATIONAL LONGSHORE AND ) Chapter 11  
WAREHOUSE UNION, )  
 )  
Debtor. )

ORDER DENYING DEBTOR'S EX PARTE APPLICATION

This case came before the court on December 7, 2023 for a hearing on Debtor International Longshore and Warehouse Union's ("ILWU") "Ex Parte Application for the Entry of an Order Providing that the Automatic Stay Does Not Apply to a Pending Appeal Involving a Pre-Petition Regulatory Decision".<sup>1</sup> ILWU noticed the Application for hearing<sup>2</sup> after it drew opposition from the International Association of Machinists and Aerospace Workers, Machinists District Lodge 160 and Machinists Local Lodge 289 (the "Machinists").<sup>3</sup> The National Labor Relations Board

<sup>1</sup> Dkt. 72 (the "Application").

<sup>2</sup> Dkt. 80.

<sup>3</sup> Dkt. 79. The Machinists filed a "Further Opposition" on November 30, 2023 (Dkt. 104). On December 4, 2023, the court struck the Further Opposition as not authorized by the Bankruptcy Local Rules.

1 (the “NLRB”) filed a brief in support of the Application.<sup>4</sup>  
2 Appearances were as noted on the record.

3 The parties do not dispute the events giving rise to the  
4 Application. On April 6, 2023, the NLRB issued a decision and  
5 order<sup>5</sup> against ILWU. ILWU petitioned the Ninth Circuit Court of  
6 Appeals for review of the Apr. 6 Decision, as did the Machinists  
7 and the Pacific Maritime Association. The NLRB has filed an  
8 application seeking enforcement of the Apr. 6 Decision. All of  
9 these matters have been consolidated for adjudication by the  
10 Ninth Circuit (the “Appeal”).

11 On October 4, 2023, ILWU filed with the Ninth Circuit a  
12 notice of commencement of this bankruptcy case.<sup>6</sup> On October 9,  
13 2023, the Machinists filed with the Ninth Circuit a notice  
14 similar to that filed by ILWU, however, the Machinists’ notice  
15 represented that “[t]he filing of this bankruptcy petition should  
16 stay [the Appeal].”<sup>7</sup> On November 2, 2023, the Ninth Circuit  
17 issued an order staying the Appeal and setting other deadlines.<sup>8</sup>

18 ILWU contends that the Ninth Circuit incorrectly stayed the  
19 Appeal and seeks an order from this court declaring that the  
20 automatic stay does not apply to regulatory actions such as that  
21 from which the Appeal arose, pursuant to 11 U.S.C. § 362(b) (4).  
22 The Machinists contend that “[t]he exception to the automatic  
23 stay [set forth in 11 U.S.C. § 362(b) (4)] for the government’s

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25 <sup>4</sup> Dkt. 107.  
26 <sup>5</sup> Dkt. 73 (Declaration of Eleanor Morton), Ex. A (the “Apr. 6 Decision”).  
27 <sup>6</sup> Dkt. 73, Ex. B.  
28 <sup>7</sup> Dkt. 73, Ex. C.  
29 <sup>8</sup> Dkt. 73, Ex. D.

1 exercise and enforcement of its regulatory powers does not apply  
2 to prosecution of appeals by private parties in an effort to  
3 overturn government actions."

4 The Machinists cite no authority in support of that  
5 statement, which ignores the fact that the Appeal arises from an  
6 action commenced by the NLRB and ignores Ninth Circuit  
7 precedent.<sup>9</sup> That said, if ILWU wants a finding that the Ninth  
8 Circuit incorrectly declared the Appeal subject to the automatic  
9 stay, it needs to request such relief from the Ninth Circuit -  
10 not this court.

11 Accordingly, and for the reasons stated on the record, the  
12 court **ORDERS** that the Application is hereby **DENIED**.

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15 **\*\*END OF ORDER\*\***  
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27 <sup>9</sup> National Labor Relations Board v. Continental Hagen Corp., 932 F.2d 828, 834  
28 (9th Cir. 1991) ("it is clear that N.L.R.B. actions are generally not affected  
by the automatic bankruptcy stay.")

**Court Service List**

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